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UNITED STATES OF AMERICA

16  
17 UNITED STATES DISTRICT COURT

18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA, ) CR No. 12-0560-JFW  
20 Plaintiff, ) GOVERNMENT'S APPLICATION FOR  
21 v. ) ENTRY OF PRELIMINARY ORDER OF  
22 KAREN GASPARIAN, ) FORFEITURE AND CRIMINAL  
23 Defendant. ) FORFEITURE MONEY JUDGMENT AT  
24 ) SENTENCING; MEMORANDUM OF POINTS  
25 ) AND AUTHORITIES  
26 )  
27 )  
28 )

1 Plaintiff, United States of America, by and through its  
2 undersigned attorneys, hereby applies for entry of a preliminary  
3 order of forfeiture and personal money judgment of forfeiture at  
4 sentencing in the amount of \$736,259.24, pursuant to Fed. R.  
5 Crim. P. 32.2(b), and the defendant's plea of guilty to Count  
6 One of the Indictment.

7 This application is supported by the factual basis for the  
8 guilty plea; the attached Declaration; and the matters set forth  
9 in the accompanying Memorandum of Points and Authorities.

10  
11 Dated: December 17, 2012

12 Respectfully submitted,

13 ANDRÉ BIROTE JR.  
14 United States Attorney

15 /s/  
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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2           **I. INTRODUCTION**

3           Defendant Karen Gasparian ("defendant") pled guilty to  
4           Counts 1 (conspiracy to fail to file currency transaction  
5           reports) and 12 (failure to have an adequate anti-money  
6           laundering program) of the Indictment. The Indictment gave the  
7           defendant notice that, upon conviction or a plea of guilty to  
8           Count One (conspiracy to cause a financial institution to fail  
9           to file a currency transaction report, in violation of 18 U.S.C.  
10          § 371), the government would seek criminal forfeiture. Pursuant  
11         to Rule 32.2(b), Federal Rules of Criminal Procedure, the  
12         government now applies for the entry of a preliminary order of  
13         forfeiture and a criminal forfeiture money judgment against the  
14         defendant. The proposed money judgment is requested in the  
15         amount of \$736,259.24, which sum the defendant and his co-  
16         conspirator G&A Check Cashing received from their violation of  
17         18 U.S.C. § 371 and 31 U.S.C. §§ 5324(a)(1) and 5313(a).

18           **II. FACTS SUPPORTING ENTRY OF MONEY JUDGMENT**

19           **A. Facts Admitted to at Plea Hearing**

20           For the purposes of this Application, the government refers  
21         the Court to the factual basis admitted by the defendant at  
22         defendant's plea hearing on September 20, 2012. At that  
23         hearing, the defendant admitted the following:

24           From at least 2006 through 2011, defendant Karen Gasparian  
25         was employed at G&A Check Cashing ("G&A"), a check cashing store  
26         located at 2901 Beverly Boulevard, Los Angeles, California. As  
27         a check cashing store, G&A was a financial institution within

1 the meaning of the Bank Secrecy Act ("BSA"). G&A was engaged in  
2 the business of, among other things, cashing checks for other  
3 people for currency.

4 As part of defendant's duties at G&A, he cashed and  
5 facilitated the cashing of checks. Defendant was aware that the  
6 BSA required financial institutions like G&A to file a "Currency  
7 Transaction Report" ("CTR") with the Department of Treasury for  
8 any single transaction where it provided more than \$10,000 to an  
9 individual on a single day. For the purposes of determining  
10 whether filing a CTR was mandatory, defendant knew that the BSA  
11 required G&A to aggregate multiple currency transactions and  
12 treat them as a single transaction if the multiple transactions  
13 were by or on behalf of one person and resulted cash-out  
14 totaling more than \$10,000 during any one business day.

In addition, defendant was aware that the BSA required G&A to develop, implement, and maintain an effective anti-money laundering program reasonably designed to prevent G&A from being used to facilitate money laundering. Despite this knowledge, defendant failed to implement an effective money laundering policy by not obtaining identification and not filing CTRs when he knew they were required.<sup>1</sup>

At some point between 2009 and 2011, defendant knowingly entered into an agreement with another (other than the two confidential government sources) to cash bundles of checks which

<sup>1</sup> The government does not seek forfeiture for the defendant's plea of guilty to Count 12 in the Indictment because forfeiture is not authorized for a violation of 31 U.S.C. § 5318(h).

1 in aggregate totaled over \$10,000 in one business day, knowing  
 2 that these bundled transactions were by and on behalf of one  
 3 person, without filing a CTR. The defendant became a member of  
 4 the conspiracy knowing its object was to avoid the CTR  
 5 requirement and intending to help accomplish the object. For  
 6 these bundled transactions exceeding \$10,000, defendant knew  
 7 that a CTR was required but did not file the CTRs. As part of  
 8 the conspiracy, defendant knew the following transactions  
 9 required a CTR but defendant willfully failed to file one:

APPROXIMATE TRANSACTION DATE	CHECK NUMBERS	TOTAL FACE VALUE OF CHECKS	CASH OUT TOTAL
2/23/2009	1334, 1335, 1336	\$15,000	\$13,800
03/13/2009	1463, 1464, 1465	\$12,903	\$12,000
03/31/2009	1304, 1305, 1306	\$11,828	\$11,000
05/04/2009	1307, 1308, 1309	\$11,828	\$10,999
12/15/2009	1394, 1395, 1396	\$12,903	\$12,247
3/16/2011	1046, 1047, 1048, 1055	\$12,000	\$11,640

18           **B. Facts from Declaration of FBI Special Agent**  
 19           **Darrell Twedt**

20           As further discussed in the attached Declaration of Special  
 21 Agent Darrell Twedt, in May of 2009, the California Franchise  
 22 Tax Board ("CFTB"), pursuant to a warrant, searched the home of  
 23 Gagik Gasparian, the owner of G&A, and recovered a binder of  
 24 checks. A similar binder was recovered from G&A Check Cashing.  
 25 These two binders showed that from 2006 through 2009, G&A cashed  
 26 over \$24,541,974.82 in checks through 918 "structured  
 27 transactions" without ever filing CTRs. The government has been  
 28

1 able to trace at least \$11 million of these checks to deposits  
2 made into G&A's operating accounts. Records of the checks  
3 deposited into one of G&A's operating accounts, that held at  
4 First Federal Bank between December 2006 and July 2007, are  
5 unavailable due to First Federal Bank's subsequent merger with  
6 One West Bank. However, the available records indicate the  
7 total deposits and withdrawals on G&A's First Federal account  
8 total \$9,694,297.

9 During an undercover operation with Confidential Witness #1  
10 ("CW1"), CW1 cashed checks drawn on an undercover FBI account in  
11 the name of La Brea Health Diagnostics at G&A on multiple  
12 occasions. CW1's check cashing transactions typically took  
13 place using an intermediary named Aharon Krkasharyan. On each  
14 of these occasions, CW1 would present multiple checks whose  
15 aggregate value was over \$10,000. Copies of the checks CW1  
16 cashed appear in the binders CFTB recovered from Gagik Gasparian  
17 and from G&A. The checks CW1 presented in a single transaction  
18 would be copied onto a single page in a binder, dated either the  
19 day of or the business day after CW1 delivered the checks to  
20 Krkasharyan and the name "Aharon," Krkasharyan's first name, on  
21 the bottom of the page. CW1 was charged a 5% fee for his  
22 transactions.

23 On one occasion during an undercover operation with  
24 Confidential Informant #2 ("CW2"), CW2 went to G&A and met with  
25 the defendant. CW2 gave the defendant several signed blank  
26 checks purportedly from an account in the name of University Med  
27 Tech (an FBI undercover account). CW2 told the defendant that  
28

1 he wished to cash \$12,000. The defendant told CW2 that he  
2 charges a fee of 3%. CW2 later received \$11,640 from Gasparian  
3 for the cashed checks, which reflected the aggregate total of  
4 the checks (\$12,000) less G&A's 3% fee of \$360.

5

6 **III. BOTH A PRELIMINARY ORDER OF FORFEITURE AND MONEY JUDGMENT**  
7 **ARE PROPERLY ENTERED AT THIS TIME**

8 The defendant's plea to the charges alleged in Count 1 in  
9 the Indictment requires the forfeiture of all right, title, and  
10 interest in any and all property, real or personal, involved in  
11 the conspiracy to violate Title 31, United States Code, Sections  
12 5313(a) and 5324(a)(1), and any property traceable to such  
13 property, pursuant to 31 U.S.C. § 5317(c)(1)(A). As required in  
14 Fed. R. Crim. P. 32.2(a) the defendant was on notice that the  
15 government would seek forfeiture because the Indictment included  
16 forfeiture allegations related to Count 1.

17 The proposed preliminary order and money judgment in the  
18 amount of \$736,259.24 that accompany this application are based  
19 on the defendant's plea of guilty to Count 1 of the Indictment,  
20 the factual basis for the guilty plea, and the attached  
21 Declaration provided with this application. The defendant shall  
22 be jointly and severally liable for this amount with his co-  
23 conspirator G&A. As contemplated by Rule 32.2(b)(2)(B), the  
24 government requests that the Court enter the money judgment  
25 prior to or at the time of sentencing.

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1           A. The Government Is Entitled to Both a Preliminary Order  
2           of Forfeiture and a Money Judgment of Forfeiture in  
3           the Amount of \$736,259.24

4           Rule 32.2 of the Federal Rules of Criminal Procedure  
5           provides, in pertinent part:

6           As soon as practical after a verdict or finding of  
7           guilty, or after a plea of guilty or nolo contendere is  
8           accepted, on any count in an indictment or information  
9           regarding which criminal forfeiture is sought, the  
10          court must determine what property is subject to  
11          forfeiture under the applicable statute. . . . If the  
12          government seeks a personal money judgment, the court  
13          must determine the amount of money that the defendant  
14          will be ordered to pay.

15          Fed. R. Crim. P. 32.2(b)(1)(A).

16          In imposing a sentence for a violation of or a conspiracy  
17          to violate 31 U.S.C. §§ 5313 and 5324, the Court "shall order  
18          the defendant to forfeit all property, real or personal,  
19          involved in the offense or traceable thereto. 31 U.S.C. §  
20          5317(c)(1). "The term 'involved in' has consistently been  
21          interpreted broadly by courts to include any property involved  
22          in, used to commit, or used to facilitate the offense." United  
23          States v. Seher, 562 F.3d 1344, 1369–70 (11th Cir. 2009)  
24          (quotation marks and citation omitted); see United States v.  
25          Varrone, 554 F.3d 327, 330–31 (2nd Cir. 2009) (holding that  
26          forfeiture of property "involved in" an offense under § 5317(c)  
27          requires forfeiture of more than just instrumentalities and  
28          upholding forfeiture of the accounts of a check cashing business  
              that failed to file CTRs). "In fixing the amount of forfeiture  
              [under 31 U.S.C. § 5317(c)(1)(A)], the statute . . . affords no  
              leeway: All property involved in the failure to file CTRs is  
              forfeited as well as all property traceable to that offense."

1       United States v. Castello, 611 F.3d 116, 118 (2d Cir. 2010)  
2       (ordering district court to impose forfeiture of four percent of  
3       the value of the checks exceeding \$10,000 for which no CTRs were  
4       filed). Defendants involved in a conspiracy are jointly and  
5       severally liable for property subject to forfeiture as the  
6       result of the conspiracy. United States v. Spano, 421 F.3d 599,  
7       603 (7th Cir. 2005).

8       The government must prove what property is subject to  
9 forfeiture, including the amount of a money judgment, by a  
10 preponderance of the evidence. See United States v. Garcia-  
11 Guizar, 160 F.3d 511, 517-18 (9th Cir. 1998). "The court's  
12 [forfeiture] determination may be based on evidence already in  
13 the record, including any written plea agreement, and on any  
14 additional evidence or information submitted by the parties and  
15 accepted by the court as relevant and reliable." Fed. R. Crim.  
16 P. 32.2(b)(1)(B).

17 Here, the proof necessary to determine the amount subject  
18 to forfeiture is already in the record or is included in the  
19 Declaration of Special Agent Twedt. The binders recovered from  
20 G&A and its owner, Gagik Gasparian, show that, in the course of  
21 the conspiracy to violate 31 U.S.C. §§ 5313(a) and  
22 5324(a)(1), the defendant and G&A cashed over \$24,541,974.82 in  
23 checks through 866 structured transactions without ever filing  
24 CTRs. That these binders reflect the checks cashed in the  
25 course of the conspiracy to fail to file CTRs is corroborated by  
26 the appearance of the checks cashed by CW1 in these binders,

1 complete with a proper reference to the approximate date of the  
2 transaction and the individual to whom the funds should be paid.

3 The government seeks forfeiture of the 3% in fees, that is  
4 \$736,259.24, representing the minimum fee charged by the  
5 defendant and G&A for over \$24,541,974.82 in recorded  
6 transactions in which CTRs should have been filed, as property  
7 involved in or traceable to the conspiracy to cash checks  
8 without filing of required CTRs. The fees earned by the  
9 defendant and G&A in the course of the conspiracy were involved  
10 in the course of the conspiracy by facilitating the filing  
11 offenses by making them profitable and supporting the ongoing  
12 business. The fees were also deducted from the bundled checks  
13 that G&A and the defendant cashed without filing.

14 Despite the efforts of law enforcement, the government does  
15 not have custody of and cannot locate the monies directly  
16 involved in the conspiracy activity described in Count 1.  
17 Because the specific property involved in the crime cannot be  
18 located, an order forfeiting a money judgment equal to the  
19 amount involved in that offense is appropriate. See Fed. R.  
20 Crim. P. 32.2(b)(1)(A). A money judgment preserves one of the  
21 primary purposes of forfeiture, namely to ensure that those that  
22 break the law do not profit from their crimes. United States v.  
23 Ursery, 518 U.S. 267, 291 (1996); see United States v. Casey,  
24 444 F.3d 1071, 1077 (9th Cir. 2006) (because forfeiture is  
25 mandatory, a defendant who has already spent the money involved  
26 in the underlying offense must pay a money judgment; otherwise,  
27 he will have been allowed to enjoy the fruits of his crime,

1 which would be inconsistent with the remedial purpose of the  
2 forfeiture laws). Such a judgment represents the "defendant's  
3 continuing obligation to forfeit the money derived from or used  
4 to commit his criminal offense whether he has retained the  
5 actual dollars in his possession or not." Stefan D. Cassella,  
6 Asset Forfeiture Law in the United States, §19-4, p. 579 (1 Ed.,  
7 JurisNet 2007).

8 After entry of the money judgment, if the government at any  
9 time collects on the money judgment, the outstanding money  
10 judgment amount shall be reduced to the extent any specific  
11 property is successfully forfeited. See Fed. R. Crim. P.  
12 32.2(e).

13 **B. Criminal Forfeiture is Mandatory**

14 Forfeiture is a mandatory part of the defendant's sentence  
15 where provided by statute. United States v. Nava, 404 F.3d  
16 1119, 1124 (9th Cir. 2005) (the district court must order  
17 forfeiture in addition to imposing any other sentence); United  
18 States v. Hill, 167 F.3d 1055, 1073 (6th Cir. 1999). Thus, the  
19 Court must order the forfeiture of property shown to have been  
20 involved in the crime to which the defendant pled guilty and,  
21 where appropriate, issue a forfeiture money judgment.

22 **C. The Defendant and G&A are Jointly and Severally Liable**

23 The defendant and G&A are jointly and severally liable for  
24 the requested \$736,259.24 money judgment as co-conspirators.  
25 United States v. Elder, 682 F.3d 1065, 1073 (8th Cir. 2012)  
26 (explaining that a co-conspirator "is jointly and severally  
27 liable to forfeit the proceeds of the criminal enterprise");  
28

1       United States v. Commercial Carrier, Inc., 232 F. Supp. 2d 201,  
2       204 (S.D.N.Y. 2002) (imposing money judgment and holding that  
3       "coconspirators are liable jointly and severally to forfeit the  
4       reasonably foreseeable proceeds of their criminal activity").

5       **IV. FORFEITURE MUST BE PRONOUNCED AT SENTENCING**

6       At sentencing, pursuant to Rule 32.2(b)(4)(A) of the  
7       Federal Rules of Criminal Procedure, the order of forfeiture  
8       becomes final as to the defendant. The Court must pronounce the  
9       forfeiture conditions orally as part of the sentence imposed on  
10      the defendant (or at least make reference to them) and include  
11      the forfeiture in the judgment and commitment order. Rule  
12      32.2(b)(4)(B). The government recommends that the following  
13      language be read to the defendant and modified as appropriate  
14      for inclusion in the judgment and commitment order:

15       Pursuant to 31 U.S.C. § 5317(c)(1)(A), defendant shall  
16       forfeit to the United States the sum of \$736,259.24 in  
17       the form of a personal money judgment for the violation  
18       described in Count One of the Indictment.

19       ///

1 V. CONCLUSION

2 For the foregoing reasons, the Court should enter the  
3 proposed Preliminary Order of Forfeiture and Money Judgment.

4 DATED: December 17, 2012

5 Respectfully submitted,  
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